

Martin Brady
Docket 0166
Appl. No. 09/228,109

REMARKS

A check in the amount of the Processing Fee under 37 C.F.R. 1.17(i) for the requested addition of Mr. Cruz as a joint inventor is submitted herewith.

Claims 3 through 5 and 7 through 15 are pending in this application. Of these, claims 3, 4, 7, 8 and 10-14 were rejected under 35 USC §102(e) as fully anticipated by Brady and Cruz US Patent D417,129.

This rejection is overcome by the amendment requested above to add Anthony V. Cruz as a joint inventor of the subject matter of this application.

Before the filing of the instant application, both Mr. Brady and Mr. Cruz had informed undersigned counsel that Mr. Cruz was not involved in the conception of the utilitarian aspects sought to be patented herein because Mr. Cruz became involved in the designing of the device shown in Patent D417,129 only after the utilitarian aspects of the device had been conceived by Mr. Brady. Only recently, while Mr. Brady was reviewing old drawings, did it occur to Mr. Brady that Mr. Cruz had, in fact, contributed to part of the utilitarian aspects of the device sought to be patented. Following discussion among Mr. Brady, Mr. Cruz, and the undersigned counsel, Mr. Brady and Mr. Cruz agreed

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that they had both contributed to the device sought to patented herein. Accordingly, it is now requested that Mr. Cruz be added as a joint inventor.

Filed herewith are documents satisfying the requirements of 37 C.F.R. §1.48(a) for adding Mr. Cruz as an inventor, namely, a Statement by Mr. Cruz, two copies of a Declaration and Power of Attorney executed respectively by Mr. Brady and Mr. Cruz, and a consent signed on behalf of the assignee, Hamilton Beach/Proctor-Silex, Inc.

The Statement by Mr. Cruz notes that the invention of the subject matter of this application was jointly made by Mr. Brady and Mr. Cruz while both were employed by the assignee.

Therefore, the rejection of claims 3, 4, 7, 8, and 10-14 under 35 USC §102(e) is no longer appropriate and should be withdrawn.

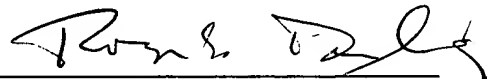
As for other aspects of the final action, the examiner indicated that claims 5 and 9 were rejected only because dependent on a rejected claim, claim 5 being dependent of claim 4 and claim 9 being dependent on claim 8. The only rejection of claims 4 and 8 herein is the rejection under 35 USC §102(e) which is overcome by this amendment. Since the rejection of claims 4 and 8 is overcome by this amendment, claims 5 and 9 should also

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be allowable without amendment. Claim 15, also dependent on claim 8, was indicated allowable if revised to overcome a rejection under 35 USC §112, second paragraph. However, there is no such rejection and, because claim 15 depends on claim 8, it is believed that claim 15 should now be allowed along with claims 8 and 9.

Claims 3 and 7-10 are rejected under 35 U.S.C. §103(a) as unpatentable over the PRESTO CAN OPENER PLUS manual, Davies patent 4,152,831 and Nielsen et al. patent 5,791,608. This rejection has been traversed in the past, including in the Appeal Brief filed February 26, 2004, and there is no need to burden this record with repeated arguments. A Notice of Appeal will be filed from this rejection.

Respectfully submitted,



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